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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

D.Z.,

Petitioner;

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G042573

(Super. Ct. No. DP011858)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Gary G. Bischoff, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Writ petition denied.

Juvenile Defenders and Donna P. Chirco for Petitioner.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy
County Counsel, for Real Party in Interest Orange County Social Services Agency.

Law Offices of Harold LaFlamme and Karen S. Cianfrani for Minor S.Z.

* * *

D.Z. (father) challenges the sufficiency of the evidence to support the juvenile court's ruling denying him reunification services based on his history of drug abuse and resistance to treatment. (Welf. & Inst. Code, § 361.5, subd. (b)(13), hereafter sometimes § 361.5(b)(13).) Counsel for father's now four-year-old son, S.Z., opposes the petition. Contrary to father's claims, substantial evidence supports the juvenile court's conclusion father suffered, within the meaning of the statute authorizing denial of reunification services, an "extensive" history of drug abuse and that his previous treatment program was "court-ordered." (*Ibid.*) Consequently, we deny father's writ petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

An Orange County Social Services Agency (SSA) social worker detained S.Z. in July 2009 after she and a Westminster police officer responded to an anonymous tip that father was using illegal drugs and physically abusing his son in a motel room. Upon entering the motel room, the officer and the social worker found father about to inject himself with heroin while S.Z. slept on a bed about 10 feet away. An ambulance transported father to a hospital when he began exhibiting symptoms of heroin withdrawal.

S.Z. had already been declared a juvenile court dependent twice. He was detained at birth in 2004 when his mother, R.D., tested positive for methamphetamine. Father and mother successfully reunified with S.Z. and S.Z.'s half brother, D.D., in June 2006.

Four months later, however, SSA detained the children again. The juvenile court sustained a new dependency petition based on father's alleged acts of domestic violence committed in front of the children, mother's unresolved substance abuse, both parents' drug-related criminal history, and father's failure to protect the children from mother's methamphetamine and marijuana abuse. In a parallel proceeding, the family law court granted mother's restraining order against father, requiring him to complete a domestic violence intervention program and a regime of drug testing that apparently included, as a precondition, participation in substance abuse treatment. The juvenile court closed the dependency case in December 2007, granting father custody of S.Z.

Within three weeks, however, SSA received and substantiated a child abuse report that father had neglected S.Z. by leaving him unsupervised in an alley on at least 15 to 20 occasions for 20 to 40 minutes at a time. Father denied the allegation, initially accepted voluntary services, but later declined them. SSA eventually closed the case without detaining S.Z.

Father admitted a history with drugs beginning with marijuana use "[j]ust a couple times" at age 13. At age 20, he began using methamphetamines regularly, including daily use for a year until he was convicted and incarcerated at age 23 for possessing the drug for sale. As part of his probation terms, he completed a nine-month-long substance abuse program in 2003 or 2004 and, as noted, in 2007, he completed

another substance abuse treatment program pursuant to the family court's domestic violence and drug testing order.

Nevertheless, he soon began using heroin. At first, he used it "only like once in a while" with a woman he was dating. By the time S.Z. was detained, however, father was injecting himself twice daily. The social worker found a "rig," a syringe filled with heroin, in the motel bathroom when she detained S.Z. Father claimed he kept the rig and drug paraphernalia, including a shoe lace he used to tie his arm off and a bag of new and used needles, out of S.Z.'s reach on a metal rack. He claimed he did not use heroin in S.Z.'s presence, but instead sent him away to his paternal grandmother's or elsewhere, or waited until S.Z. fell asleep. He claimed he was weaning himself off heroin by injecting himself with \$10 doses once in the morning and once at night. He began to "detox" while in the motel room, requiring medical assistance. He admitted he had been using heroin everyday for the last two years. He pleaded no contest to the dependency petition, including the allegation he used heroin and other illegal substances "[o]n numerous, unspecified occasions, for the past two years . . . while being the sole and primary caretaker for the children," D.D. and S.Z. The juvenile court sustained the petition and, at the disposition hearing, declined to order reunification services for father. Father now pursues this writ petition.

II

DISCUSSION

Although preservation of the family unit is among the juvenile court's highest priorities in dependency proceedings (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787), the court retains discretion to deny reunification services in situations the Legislature has concluded are likely to be futile (*In re Kenneth M.* (2004)

123 Cal.App.4th 16, 20). As relevant here, under section 361.5(b)(13), “Reunification services need not be provided to a parent or guardian . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (13) That the parent or guardian of the child has a history of *extensive*, abusive, and chronic use of drugs or alcohol and has resisted prior *court-ordered* treatment for this problem during a three-year period immediately prior to the filing of the petition” (Italics added.)

We review the juvenile court’s determination to deny reunification services for substantial evidence, examining the record in the light most favorable to the court’s ruling. (*In re James C.* (2002) 104 Cal.App.4th 470, 480 (*James C.*)). So long as reasonable inferences from the evidence support the conclusions of the trier of fact, we do not substitute our deductions for those reached below. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600.)

A. *Father’s History of Drug Abuse Was “Extensive”*

Father argues the evidence does not establish his drug use was “extensive,” as required to deny reunification services under section 361.5(b)(13), because, according to his tabulation, it encompassed “really only four years of his twenty nine years.” The juvenile court, however, could reasonably determine his drug use was extensive given the variety of substances he abused and the lengthy period over which he abused them. He spiraled downward from first using marijuana at age 13 to chronic abuse of methamphetamine and then heroin in his 20’s.

Father understates the extent of his drug use. He testified in his defense at the disposition hearing that he used heroin for eight to 12 months but, viewing the evidence in the light most favorable to the trial court’s ruling (*James C., supra*), we note he admitted to the detaining social workers that he had been using heroin for two years.

He also admitted he used methamphetamine for at least three years, beginning at age 20. While father spreads his “four years in 29” usage tabulation over his whole life, his own childhood years are irrelevant because children do not generally have the opportunity to abuse drugs. Father, who was 28 years old when SSA detained S.Z., abused drugs for the majority of his 20’s. The trial court could reasonably conclude father’s drug history was extensive given that his hardcore drug abuse extended over most of his adult life and, notably, for a period longer than his son’s entire life. (Cf. *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419 [given brevity of youth, child is entitled to “get on with the task of growing up”]; *In re Marilyn H.* (1993) 5 Cal.4th 295, 310 [“Childhood does not wait for the parent to become adequate”].) The fact he used methamphetamine daily, and heroin twice daily, also supported the trial court’s conclusion he extensively abused drugs. Father’s challenge to the sufficiency of the evidence is therefore without merit.

B. *Father Attended a “Court-Ordered” Substance Abuse Treatment Program*

Substantial evidence also supports the juvenile court’s determination father’s 2007 substance abuse treatment program was “court[]ordered,” as required for the court to bypass reunification services under section 361.5(b)(13). Father complains SSA failed to introduce the family court order allegedly requiring his participation in a substance abuse treatment program, but father’s own testimony describing the order filled the gap. (See *Jensen v. BMW of North America, Inc.* (1995) 35 Cal.App.4th 112, 134 [testimony of a single witness suffices to prove a material fact]; accord, *People v. Gammage* (1992) 2 Cal.4th 693, 700.) Father admitted the program the family law judge ordered him to complete in his domestic violence case included a substance abuse “component.” He also admitted that if he had not attended the substance abuse program

“[i]t would probably be like a violation of the D.V. court and they’d probably [have] put me in jail” or “reinstate[d] the classes or do[ne] something.”

The trial court could reasonably infer from this testimony that father’s participation in the substance abuse program was court ordered. Father characterizes the inference as an “assumption[,]” arguing “[t]he juvenile court cannot rely upon factual assumptions . . . gleaned from father’s testimony.” The court’s inference was far from an unfounded assumption. Facts that may be reasonably inferred or deduced from testimony, as here, constitute substantial evidence supporting the trier of fact’s conclusions, and which we may not second-guess. (*People v. Crittenden* (1994) 9 Cal.4th 83, 139; *People v. Rayford* (1994) 9 Cal.4th 1, 23.) Moreover, father admitted the family law court ordered drug testing as part of his domestic violence case plan and that his referral for testing through the parole department required substance abuse counseling before the agency would administer drug tests. The juvenile court could reasonably infer the family law court was familiar with this requirement and that, in ordering drug testing, the family law court effectively ordered father to complete substance abuse treatment. Consequently, father’s challenge to the court-ordered nature of his treatment fails.

III

DISPOSITION

The writ petition is denied.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.